

2012 WL 9246996 (Minn.Dist.Ct.) (Trial Pleading)

District Court of Minnesota.

Tenth Judicial District

Washington County

Margaret Ann HUNTER, Plaintiff,

v.

ANCHORBANK, N.A. and Emigrant Mortgage Company, INC., Defendants.

No. 82CV124683.

August 7, 2012.

### **Complaint**

Berglund & Berglund, LTD.

[John J. Berglund](#) (#7432), Mark E. Berglund (#0338230), 2140 Fourth Avenue North, Anoka, Minnesota 55303, (763) 427-5950, Attorneys for Plaintiff.

TO: ANCHORBANK, N.A. AND EMIGRANT MORTGAGE COMPANY, INC., DEFENDANTS ABOVE-NAMED AND THEIR ATTORNEYS, LAWRENCE A. WILFORD AND JAMES A. GESKE, WILFORD, GESKE & COOK, P.A., 8425 SEASONS PARKWAY, SUITE 105, WOODBURY, MINNESOTA 55125-4393.

BY AND FOR ITS COMPLAINT AGAINST DEFENDANTS, Plaintiff Margaret Ann Hunter states and alleges:

### **FACTUAL BACKGROUND**

1. At all relevant times, Plaintiff Margaret Ann Hunter ("Hunter") is a resident of Dakota County, Minnesota.
2. At all relevant times, Defendant Anchor Bank, N.A. ("Anchor") has and had its principal place of business in St. Paul, Minnesota.
3. At all relevant times, Defendant Emigrant Mortgage Company, Inc. ("Emigrant") has and had its principal place of business located at 5 East 42<sup>nd</sup> Street, 10<sup>th</sup> Floor, New York, NY 10017.
4. At all relevant times, Plaintiff Hunter was the record owner of certain real property located in Dakota and Washington counties, respectively. More specifically, the properties in question are:
  - a. *Washington County*: 1539 Cedar Lane, Newport, MN 55055 ("Newport"); legally described as: Lot 37, Riverwood Acres No. 2, Washington County, Minnesota; and
  - b. *Dakota County*: 6020 Asher Court, Inver Grove Heights, MN 55077 ("Inver Grove"); legally described as: Lot 3, Block 1, Shindeldecker 2<sup>nd</sup> Addition, Dakota County, Minnesota.
5. On or about February 6, 2004, Plaintiff Hunter entered into a Mortgage with Defendant Anchor, pursuant to the terms of an Adjustable Rate Note ("Note").

6. The Note was secured by a lien on Plaintiff Hunter's Newport property in Washington County.
7. Prior to entering into the Note, Plaintiff Hunter sought and received reassurances from Defendant Anchor that neither the Mortgage nor the Note was secured by a lien on her Inver Grove property in Dakota County.
8. Upon information and belief, Defendant Anchor and Plaintiff Hunter believed the Mortgage and Note would only be secured by a lien on the Newport property.
9. The Note was subsequently transferred to Emigrant Mortgage Company, Inc. ("Emigrant") on or about February 6, 2004.
10. On or about February 27, 2004, at the insistence of Defendant Anchor and or Emigrant, Plaintiff Hunter signed a document titled "Rider E," which purportedly encumbered both the Newport (Washington County) and Inver Grove (Dakota County) properties.
11. Because Ms. Hunter's son lost his job and was unable to continue making payments under the terms of the Note, Emigrant initiated foreclosure proceedings on *both* the Newport and Inver Grove properties.
12. The date for the sale of the foreclosed properties was scheduled for September 9, 2011, but Plaintiff Hunter filed an Affidavit of Postponement, thereby postponing the sale for five months until February 9, 2012, and shortening the redemption period to five weeks from the date of sale, or until Thursday, March 15, 2012.
13. Plaintiff Hunter and Defendant Emigrant entered into negotiation discussions in an attempt to resolve the matter on or about March 5, 2012.
14. Pursuant to the negotiations, stipulations to extend the redemption period for the properties were entered into on April 27, 2012, May 31, 2012, June 28, 2012 and July 25, 2012.
15. The final stipulation indicates that the redemption period expires on August 15, 2012.
16. The negotiation discussions have broken down.

#### **COUNT 1: FRAUD AND MISREPRESENTATION**

17. Defendant Anchor falsely represented a material fact to Plaintiff Hunter; namely, that the Mortgage would not encumber the Inver Grove property.
18. At the time the false representations were made, Defendant Anchor knew that the representations were false and/or represented that it knew about these facts when it did not know if said facts were true or false.
19. The false representations were made by Defendant Anchor intending that Plaintiff Hunter would rely upon them.
20. On or about February 27, 2004, at the insistence of Defendant Anchor, Plaintiff Hunter signed a document titled "Rider E," which purportedly encumbered both the Newport (Washington County) and Inver Grove (Dakota County) properties.
21. Plaintiff Hunter relied and acted upon the false representations.
22. Plaintiff Hunter was harmed as a direct result of relying on the false representations.

### **COUNT 2: NEGLIGENT MISREPRESENTATION**

23. At all relevant times, Defendant Anchor was in the business of extending Mortgages to borrowers such as Plaintiff Hunter.

24. Defendant Anchor had a **financial** interest in securing a Mortgage from Plaintiff Hunter, and having that Mortgage secured by both the Newport and Inver Grove properties.

25. Defendant Anchor supplied false information - namely, that the Mortgage would not encumber the Inver Grove property - to Plaintiff Hunter to guide her in its own business transactions.

26. Defendant Anchor failed to use reasonable care or competence in obtaining the information or communicating it to Plaintiff Hunter.

27. Plaintiff Hunter relied on the information provided by Defendant Anchor, and was justified in relying on said information.

28. On or about February 27, 2004, at the insistence of Defendant Anchor, Plaintiff Hunter signed a document titled "Rider E," which purportedly encumbered both the Newport (Washington County) and Inver Grove (Dakota County) properties.

29. Plaintiff Hunter was **financially** harmed in relying on the information.

### **COUNT 3: PROMISSORY ESTOPPEL**

30. In reliance upon the promises and assurances given to her by Defendant Anchor that the Mortgage would not encumber and would not be secured by a lien on the Inver Grove property, Plaintiff Hunter signed the Note, Mortgage, and related documents.

31. Plaintiff Hunter relied to her detriment on the aforesaid assurances by Defendant Anchor, and thereby suffered damages.

### **COUNT 4: MUTUAL MISTAKE**

32. Plaintiff Hunter realleges paragraphs 1 through 27 and incorporates the same as if fully set forth herein.

33. In the alternative, Plaintiff Hunter and Defendant Anchor believed that the Mortgage and Note would be secured by a lien against the Newport property only and would not encumber the Inver Grove property.

34. The fact that the Mortgage and Note would not encumber the Inver Grove property by Plaintiff Hunter and Defendant Anchor was a basic assumption on which the loan was made.

35. The mistaken belief that the Mortgage and Note would not encumber the Inver Grove property, when in reality the Mortgage and Note do encumber the Inver Grove property, had a material effect upon the agreed exchange between the parties.

36. Because of Plaintiff Hunter and Defendant Anchor's mutual mistake, Plaintiff Hunter has suffered damages.

### **COUNT 5: SET ASIDE**

37. Defendant Emigrant has failed to observe and adhere to the statutory requirements for foreclosing a Mortgage by advertisement, including but not limited to:

a. *Minn. Stat. § 580.03*: Publish notice of the foreclosure sale in both Dakota and Washington Counties, where the respective properties in question are located.

b. *Minn. Stat. § 580.06*: Sell each property in the county (Washington and Dakota, respectively) where the property is situated.

c. *Minn. Stat. § 580.08*: Sell each property separately, in separate sales.

38. Despite these defects in the process of foreclosing by advertisement, Defendant Emigrant foreclosed on both the Newport and Inver Grove properties anyway, and both properties were subsequently sold in one sheriff's sale for both properties held on or about February 17, 2012 in Washington County, Minnesota.

39. Because of these defects in the process of foreclosing by advertisement, Plaintiff Hunter suffered damages, and the foreclosure must be set aside.

#### **COUNT 6: FINANCIAL EXPLOITATION OF A VULNERABLE ADULT**

40. At all relevant times, including but not limited to February 6, 2004, February 11, 2004, and February 27, 2004, Plaintiff Hunter was a vulnerable adult as defined in *Minn. Stat. § 626.5572, subd. 21 (2004)*.

41. Defendant Anchor committed **Financial Exploitation** of a Vulnerable Adult, as defined in *Minn. Stat. § 626.5572, subd. 9 (2004)*.

42. Because of said **Financial Exploitation**, Plaintiff Hunter suffered damages and, under *Minn. Stat. § 626.557, subd. 20*, is entitled to recover from Defendant Anchor treble actual damages or \$10,000.00, whichever is greater, and reasonable costs and attorney's fees.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Hunter prays for the following relief:

1. That the foreclosure sale on the Inver Grove property be set aside because the Mortgage did not encumber the Inver Grove property and Defendant Emigrant did not comply with the statutory requirements for foreclosure.
2. For a Declaration that the Mortgage with Anchor Bank/Emigrant encumbers only the property in Washington County.
3. That Plaintiff be awarded damages in excess of \$50,000.00, in an amount to be proven more specifically at trial.
4. That Plaintiff Hunter be awarded her costs and disbursements, including reasonable attorney's fees.

Dated: August 7, 2012.

**BERGLUND & BERGLUND, LTD.**

<<signature>>

John J. Berglund (#7432)

Mark E. Berglund (#0338230)

2140 Fourth Avenue North

Anoka, Minnesota 55303

(763) 427-5950

Attorneys for Plaintiff

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.